

Agenda Item #14.A.



STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.

BOARD OF VOCATIONAL NURSING & PSYCHIATRIC TECHNICIANS
2535 Capitol Oaks Drive, Suite 205, Sacramento, CA 95833-2945
Phone (916) 263-7800 Fax (916) 263-7857 Web www.bvnpt.ca.gov



DATE: January 28, 2011

TO: Board Members

FROM: Angelina Martin
Enforcement Division Chief

SUBJECT: **Statutory Proposal to Amend Business and Professions Code, Sections 2878.1 and 4521.2, Relative to Mandatory Reporting**

STATEMENT OF ISSUE

The Board of Vocational Nursing and Psychiatric Technicians (Board) has the authority to issue an administrative fine against employers of licensed vocational nurses (LVNs) and psychiatric technicians (PTs) who fail to report a suspension or termination for cause of a LVN or PT from their employ. However, many licensees are permitted to submit resignations in lieu of suspension or termination from employment for gross negligence, incompetence, and unsafe or deceitful acts. Additionally, existing law does not currently require employment agencies and registries to report that a licensee was rejected from assignment at a health facility or home health care due to acts which would normally be cause for suspension or termination. When this occurs, licensees are able to gain employment by an unsuspecting hospital, nursing or convalescent home, other healthcare facility, or are assigned to home health care because no negative employment history exists against the licensees. Frequently, the licensees continue to commit similar acts of misconduct and seriously jeopardize the consumer.

The intended purpose of Business and Professions Code (Code), Sections 2878.1 (VN) and 4521.2 (PT), is to enhance public protection by reducing the number of incompetent or unsafe licensees that are able to find employment after they violate the laws pertaining to their license or have been suspended or terminated for cause by one facility. LVNs and PTs are required to report other LVNs and PTs who have committed any act violating the laws pertaining to their licenses and employers are required to report a suspension or termination for cause of any LVN or PT. These reports bring awareness of licensee misconduct to the Board when it may have otherwise remained unknown.

The Board should consider amending Sections 2878.1 (VN) and 4521.2 (PT) of the Code, to require employers to report resignations submitted by LVNs and PTs in lieu of suspension or termination for cause and to require employment agencies and registries to report licensees who are "rejected" for cause as well as suspended, terminated or resigned in lieu of suspension or termination for cause (see Attachment A).

BACKGROUND

The Board was established to regulate and enforce the laws related to the practice of LVNs and PTs. The Board's highest priority in exercising its licensing, regulatory and disciplinary functions is public protection. Toward this end, the Board ensures that only qualified persons are LVNs and PTs by enforcing education requirements and standards of practice. To achieve this mandate, the Board must:

- Adopt regulations to identify and clarify the performance and practice standards for its licensees;
- Adopt regulations that prevent the licensure of unsafe practitioners including mentally ill or chemically dependent applicants;
- Enforce the regulations governing LVNs and PTs by taking disciplinary action against incompetent or unsafe licensees efficiently and effectively;
- Establish the minimum requirements for examination and licensure; and
- Accredite California Vocational Nursing and Psychiatric Technician schools.

The Board strives to educate consumers of their rights and the public's health and safety is the principal concern promoted by the Board.

JUSTIFICATION

The proposed amendments would require employers to report resignations submitted by LVNs or PTs in lieu of suspension or termination for cause and would require employment agencies and registries to report licensees who are "rejected" for cause as well as suspended, terminated or resigned in lieu of suspension or termination for cause. Sections 2878.1 and 4521.2 of the Code define suspension or termination for cause as suspension or termination from employment for any of the following reasons:

- (1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice vocational nursing.
- (2) Unlawful sale of a controlled substance or other prescription items.
- (3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.
- (4) Falsification of medical records.
- (5) Gross negligence or incompetence.
- (6) Theft from patients or clients, other employees, or the employer.

Employers, employment agencies and registries would be required to report only those resignations by LVNs or PTs or "rejections" that are defined within these sections.

The proposed amendments would close a loop hole that exists in current statute and assist the Board in initiating investigations against licensees who practice in a manner that jeopardizes public safety. Investigations that substantiate misconduct would result in the Board taking disciplinary action against the licensees. Unsubstantiated or bogus allegations do not proceed through litigation.

LVNs and PTs care for infant to elderly clients in hospitals and private nursing and convalescent facilities; the developmentally disabled clients in state institutions and community care homes; mentally disordered clients in facilities including prisons; and infants/children in a variety of settings. These vulnerable patients and clients require the utmost protection as they cannot defend themselves against incompetent, grossly negligent or abusive licensees.

Licensees are suspended or terminated from employment for serious violations of current statutes or standards of practice. Such violations include, but are not limited to, incompetence, gross negligence, client abuse, sexual misconduct, substance abuse, drug diversion, theft, and other harmful acts. The timely reporting of practitioner misconduct assists the Board to fulfill its mandate to protect the public.

RECOMMENDATIONS

1. The Board approve the statutory proposal to amend Business and Professions Code, Sections 2878.1 (VN) and 4521.2 (PT) relative to requiring employers to report resignations submitted by LVNs or PTs in lieu of suspension or termination for cause and requiring employment agencies and registries to report licensees who are “rejected” for cause as well as suspended, terminated or resigned in lieu of suspension or termination for cause.
2. Direct staff to proceed with the legislative process.

Attachment A – Proposed Statutory Language